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United States General Accounting Office

Briefing Report to the Honorable Max Baucus, U.S. Senate

33

1989

FOREST SERVICE

Information on the Forest Service Appeals System

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Resources, Community, and
Economic Development Division

B-233613

February 16, 1989

The Honorable Max Baucus
United States Senate

Dear Senator Baucus:

As requested, we are providing you with information on Forest Service appeals. Specifically, as agreed to with your office, we are providing you with information on (1) the frequency, processing times, and unresolved backlog of Forest Service appeals, (2) the reasons for any increases, (3) whether timber sale and forest plan appeals have delayed timber sales in Forest Service regions 1 and 6 (which account for 55 percent of all Forest Service timber sale volume and 35 percent of all appeals), and (4) whether alternatives, including changes in appeals regulations currently being considered by the Forest Service, might expedite appeals processing. To the extent that it was possible, the information is being provided for fiscal years 1983-88.[1]

The Forest Service appeals system is authorized by regulations issued by the Department of Agriculture. The regulations provide that the public may appeal decisions made by a Forest Service officer to that officer's immediate supervisor. Appeals that are denied may be re-appealed to the next higher supervisor.

In summary, we found that:

-- Nationwide, the number of Forest Service appeals filed annually more than doubled between fiscal years 1983 and 1988, from 584 to 1,298. Average processing time for appeals increased from 201 days in fiscal year 1986 to

[1]Data for fiscal years 1983-88 were not available for some of the information requested. As agreed, we used the latest information available. For example, data on the processing times for Forest Service appeals were only available for fiscal years 1986, 1987, and the first half of fiscal year 1988.

363 days by March 31, 1988, which is more than 2-1/2 times as long as generally provided for appeals processing. The nationwide backlog of unresolved appeals grew from 64 at the end of fiscal year 1983 to 830 by the end of fiscal year 1988. Forest plan appeals accounted for the largest portion of all these increases.

-- The increases in appeals processing times and in the backlog of unresolved appeals do not appear to be due to problems with the appeals system itself. Rather, they most often occurred because the Forest Service has experienced difficulties in resolving complex environmental issues raised in the increasing number of timber sale and forest plan appeals.

-- Only about 6 percent of regions 1 and 6 timber sale volume was appealed in fiscal years 1986-87, with less than 1 percent being delayed by appeals. Appeals of forest plans did not cause any delays of timber sales.

-- Changes in appeals regulations proposed by the Forest Service may reduce the number and average processing times of appeals, but the extent cannot be determined until the regulations have been finalized and implemented.

This briefing report is divided into six sections that discuss in greater detail the information you requested. Specifically, section 1 discusses our scope and methodology; section 2 discusses data on national trends in appeals; section 3 discusses timber sale appeals in regions 1 and 6; section 4 provides data on forest plan appeals in region 1; section 5 contains data about effects of appeals on delaying timber sales; and section 6 contains information on proposed changes in Forest Service appeals regulations and a comparison with processing times for timber sale appeals brought under the Bureau of Land Management's appeals system.

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In conducting our study, we relied primarily on Forest Service and Bureau of Land Management data but did not independently verify the accuracy of all data nor trace them to the agencies' records in all cases. We discussed the information in this briefing report with Forest Service officials, who said it was fair and accurate. However, they told us they believed that the quality of appeal processing,

which we did not examine, is as important as the timeliness issues discussed in this briefing report. We performed our work between January and October 1988.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the appropriate Senate and House committees; the Director, Office of Management and Budget; the Acting Secretary of Agriculture; and other interested parties. Copies will be made available to others upon request. Should you need further information, please contact me at (202) 275-5138.

Major contributors to this briefing report are listed in appendix I.

Sincerely yours,

John W. Harman
Director
Food & Agriculture Issues

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ABBREVIATIONS

BLM	Bureau of Land Management
GAO	General Accounting Office

SECTION 1

INTRODUCTION

BACKGROUND

The Forest Service appeals system has been in existence for more than 80 years, undergoing several changes over this time. The current appeals system is authorized by regulations (36 C.F.R. 211.18) issued by the Department of Agriculture. These regulations provide that members of the public may appeal decisions of Forest Service officers to their immediate supervisors.

The Forest Service makes many different kinds of decisions that are subject to appeal. These include decisions on whether, or under what terms and conditions, it will permit various kinds of recreational activities, mineral and gas exploration, or livestock grazing on its lands.

One type of decision frequently appealed involves Forest Service sales of national forest timber. The Forest Service offers several thousand individual sales annually and, in fiscal year 1987, the total volume was in excess of 11 billion board feet. Environmental and recreation groups, among others, appeal timber sales on the basis of concerns that wildlife habitat and water quality will be diminished. These groups allege that environmental analyses, which the Forest Service generally prepares prior to sales, are in error or were inadequately conducted.

Additionally, since 1985, numerous appeals have been filed against forest plans. Forest plans are complex, lengthy documents that the Forest Service has been mandated to prepare under provisions of the National Forest Management Act of 1976. These plans, all of which are being issued for the first time, establish each forest's basic management goals for a 10- to 15-year period. The goals include long-range timber-cutting targets and generally define potential harvesting areas. However, detailed locations or volumes of specific timber sales are not included in forest plans. These plans also establish the goals for the other uses of forest lands (fish, wildlife, recreation, water quality, grazing, and gas and mineral development). Environmental and recreation groups frequently appeal forest plans, citing environmental concerns and alleging analytical errors. In addition, the timber industry and local governments often appeal forest plans. They generally argue that the long-range timber volume goals established in these plans are too low.

STEPS IN THE APPEALS PROCESS

The current Forest Service appeals process involves two levels. Appeals regulations and Forest Service administrative

practice generally provide 140 days to complete the four basic steps that comprise the level 1 appeals process. (This includes a 5-day period the Forest Service has administratively added to allow for internal transmitting of the appeal record.) The overall time for processing an appeal may be lengthened if (1) extensions are granted to appellants or taken by the Forest Service in any of the steps, (2) the appellants are permitted to make oral presentations during the final step of the Forest Service decisionmaking process before the appeal record is closed, (3) other interested parties are granted intervenor status, which allows them to comment on oral presentation material, or (4) any additional information is submitted by any of the parties during the final stage of the appeal record preparation. In the case of oral presentations or additional submissions, a 20-day period is provided for parties to comment. We compared the basic 140-day time frame with actual processing times except in the case of oral presentations, where we allowed for the additional comment period.

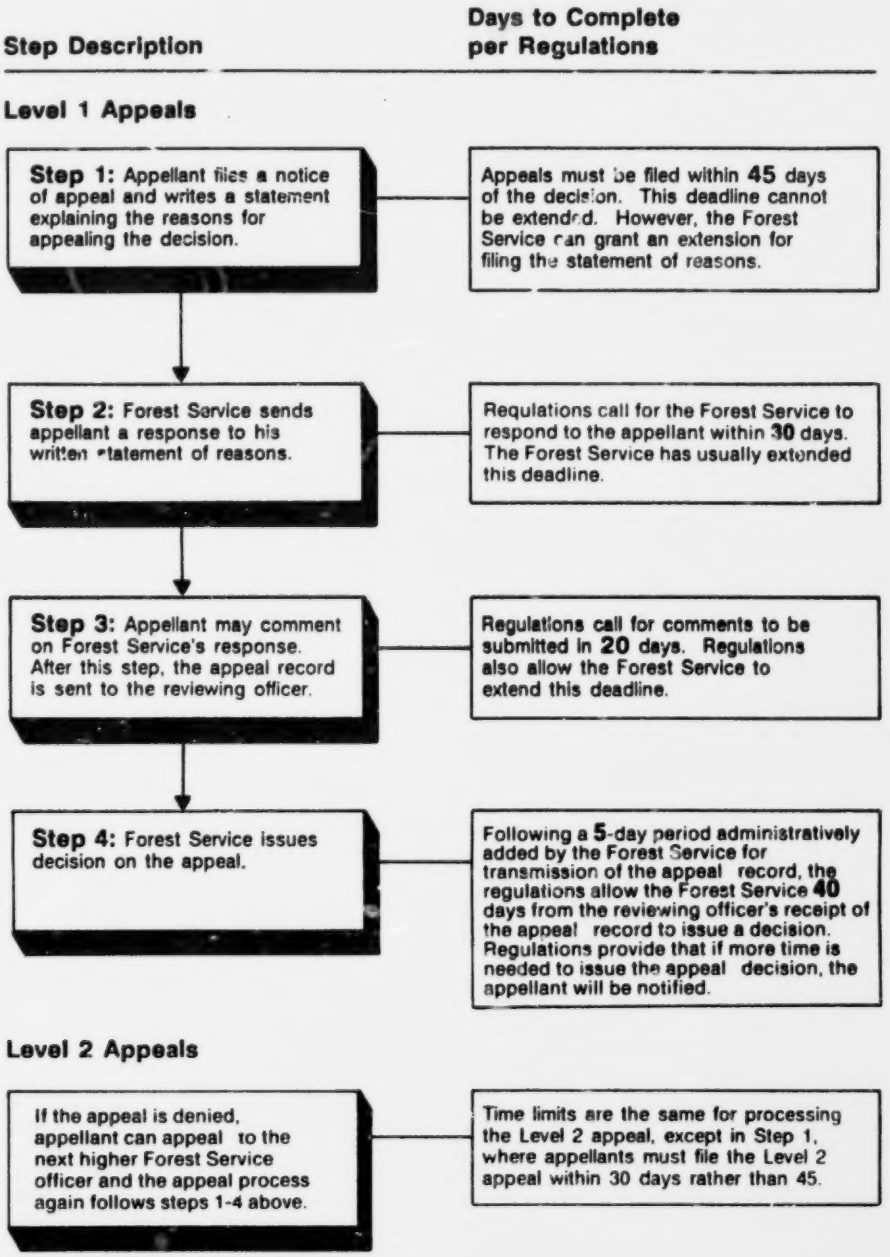
Should the Forest Service deny the appeal (i.e., uphold its original decision), the appellant or an intervenor may re-appeal this judgment to the next higher Forest Service supervisor. Such level 2 appeals follow the same steps and have the same time frames as level 1 appeals except for the first step, where an appeal must be filed within 30 days instead of 45 days. Thus, the total time generally allowed for processing appeals through both the first level (140 days) and the second level (125 days) is 265 days. However, the Forest Service treats each level of appeal as a separate appeal in its records, and no record of cumulative time beyond a single level can be identified for a particular appeal. Forest plan appeals are limited to only one level because the decision to adopt these plans is made by the highest ranking officials in Forest Service regional offices, and the only higher level available for appealing such decisions is the Chief of the Forest Service. An appeal decision by the Chief of the Forest Service may be reviewed by the Secretary of Agriculture at his discretion and under the procedures he deems appropriate.

In addition to level 1 and level 2 appeals, an appeal can occur if the Forest Service dismisses an appeal on technical grounds without judging its merits (e.g., for lack of timely filing), or if it denies an appellant's request to stop project actions during the appeals process. Dismissals of appeals on technical grounds or denials of stop-action requests may also be appealed. Such appeals, called procedural appeals, must be processed prior to the final decisions on the original appeals from which they arose and cannot be appealed to a level higher than that available for the original appeal. Additionally, in most cases final Forest Service appeals decisions may be judicially reviewed.

In May 1988 the Forest Service proposed changes to the appeals regulations which would, among other things, eliminate some of these steps and shorten time frames.

Figure 1.1 illustrates the current steps and time frames in the basic appeals process, assuming no oral presentations, no intervenors, and no additional materials are submitted during the final stage of preparing the appeal record.

Figure 1.1: Steps in the Forest Service Appeals Process


Step Description
Days to Complete per Regulations
Level 1 Appeals
Step 1: Appellant files a notice of appeal and writes a statement explaining the reasons for appealing the decision.
Appeals must be filed within 45 days of the decision. This deadline cannot be extended. However, the Forest Service can grant an extension for filing the statement of reasons.
Step 2: Forest Service sends appellant a response to his written statement of reasons.
Regulations call for the Forest Service to respond to the appellant within 30 days. The Forest Service has usually extended this deadline.
Step 3: Appellant may comment on Forest Service's response. After this step, the appeal record is sent to the reviewing officer.
Regulations call for comments to be submitted in 20 days. Regulations also allow the Forest Service to extend this deadline.
Step 4: Forest Service issues decision on the appeal.
Following a 5-day period administratively added by the Forest Service for transmission of the appeal record, the regulations allow the Forest Service 40 days from the reviewing officer's receipt of the appeal record to issue a decision. Regulations provide that if more time is needed to issue the appeal decision, the appellant will be notified.
Level 2 Appeals
If the appeal is denied, appellant can appeal to the next higher Forest Service officer and the appeal process again follows steps 1-4 above.
Time limits are the same for processing the Level 2 appeal, except in Step 1, where appellants must file the Level 2 appeal within 30 days rather than 45.

Source: 36 C.F.R. 211.18 and the Forest Service.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective in this review was to examine various aspects of the Forest Service appeals system. Specifically, we agreed to obtain data on

- the number of timber sale, forest plan, and other appeals, as well as the backlog of unresolved appeals nationwide, for fiscal years 1983-88;
- the total processing time required for closed and unresolved appeals at Forest Service headquarters from fiscal year 1986 through mid-fiscal year 1988;
- the length of time that active and recently closed timber sale appeals in Forest Service regions 1 and 6 and forest plan appeals in region 1 spent in specific appeal processing steps;
- how these actual processing times differ from time frames outlined for these steps in agency regulations and why;
- whether appeals are delaying specific timber sales, affecting total sales volume, or causing relocation of planned sales; and
- the potential impact of proposed revisions in Forest Service appeals regulations and the time taken to process timber sale appeals under the appeals system used by the Bureau of Land Management (BLM), Department of the Interior.

In conducting our analysis, we relied primarily on Forest Service and BLM data; however, we did not independently verify the accuracy of all data nor trace them to the agencies' records in all cases. The time periods covered by these data varied slightly because they are maintained in different data bases which use varying time frames, but in all cases we used the latest data available. For example, we identified the number and backlog of different kinds of appeals filed nationwide from Forest Service headquarters summary records for fiscal years 1983-88. We identified appeals processing times for the 1,080 appeals processed in Forest Service headquarters during fiscal years 1986, 1987, and the first half of 1988 from computer listings provided by agency headquarters staff. No comprehensive data on processing times for appeals in regional offices were available.

We determined the time that the 151 timber sale appeals filed in regions 1 and 6 between October 1, 1985, and May 31, 1988, spent in specific appeals processing steps from individual regional appeal files. These regions include the states of Oregon, Washington, Montana, North Dakota, and parts of Idaho, Wyoming, and

South Dakota and account for 55 percent of all Forest Service timber sale volume nationally and 35 percent of all appeals. We identified the same information for the 177 forest plan appeals filed in region 1 between October 1, 1985, and June 30, 1988, from regional computer records. Regions 1 and 6 agency timber staffs provided data on sales volume and actual sales dates for appealed timber sales planned for fiscal years 1986-87.

We obtained summary data on average BLM appeals processing times for 80 timber sale appeals filed from fiscal year 1981 through August 31, 1988, from BLM staff in Portland, Oregon.

We interviewed national and regional Forest Service officials and timber industry and environmental group representatives to identify reasons for the time taken to process appeals and for delays of timber sales. We also discussed with these representatives the likely effects of changes in appeals regulations recently proposed by the Forest Service.

As agreed with your office, our review did not include appeals of re-offered timber sales that the Forest Service had previously bought back nor appeals of sales designed to salvage fire-damaged timber. Forest Service headquarters and regional officials reviewed the information contained in this report and said it was fair and accurate. However, they told us they believed that the quality of appeals processing, which we did not examine, is as important as the timeliness issues discussed in this report. Sections 2 through 6 contain our detailed results.

SECTION 2

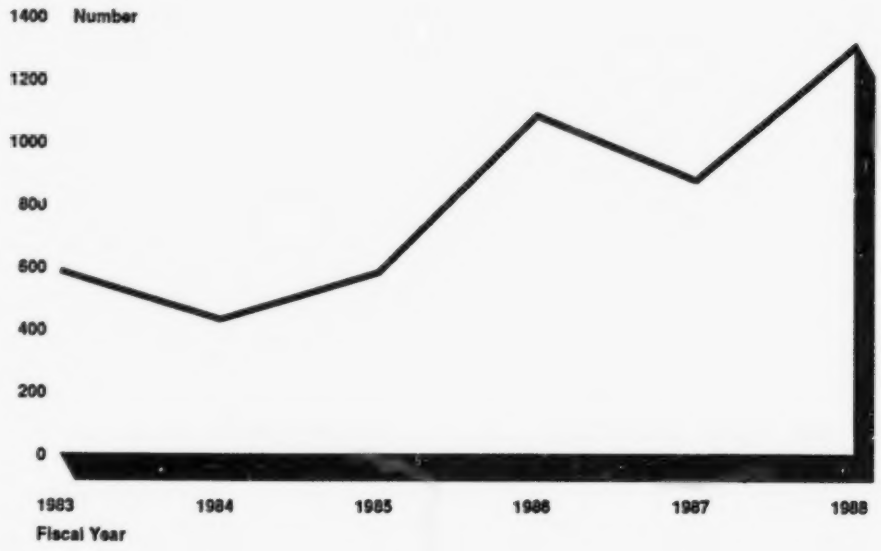
NATIONAL TRENDS IN APPEALS

Nationwide, the number of appeals filed annually, the time required to process them, and the number of unresolved appeals all increased during the period covered by our analysis. Forest Plan appeals were a principal factor in all of these increases.

NUMBER OF FOREST SERVICE APPEALS FILED ANNUALLY

The number of appeals filed annually nationwide more than doubled between fiscal years 1983 and 1988, increasing from 584 to 1,298 at the end of this period, as shown in figure 2.1.

Figure 2.1: Number of Forest Service Appeals Filed Annually Fiscal Years 1983-88



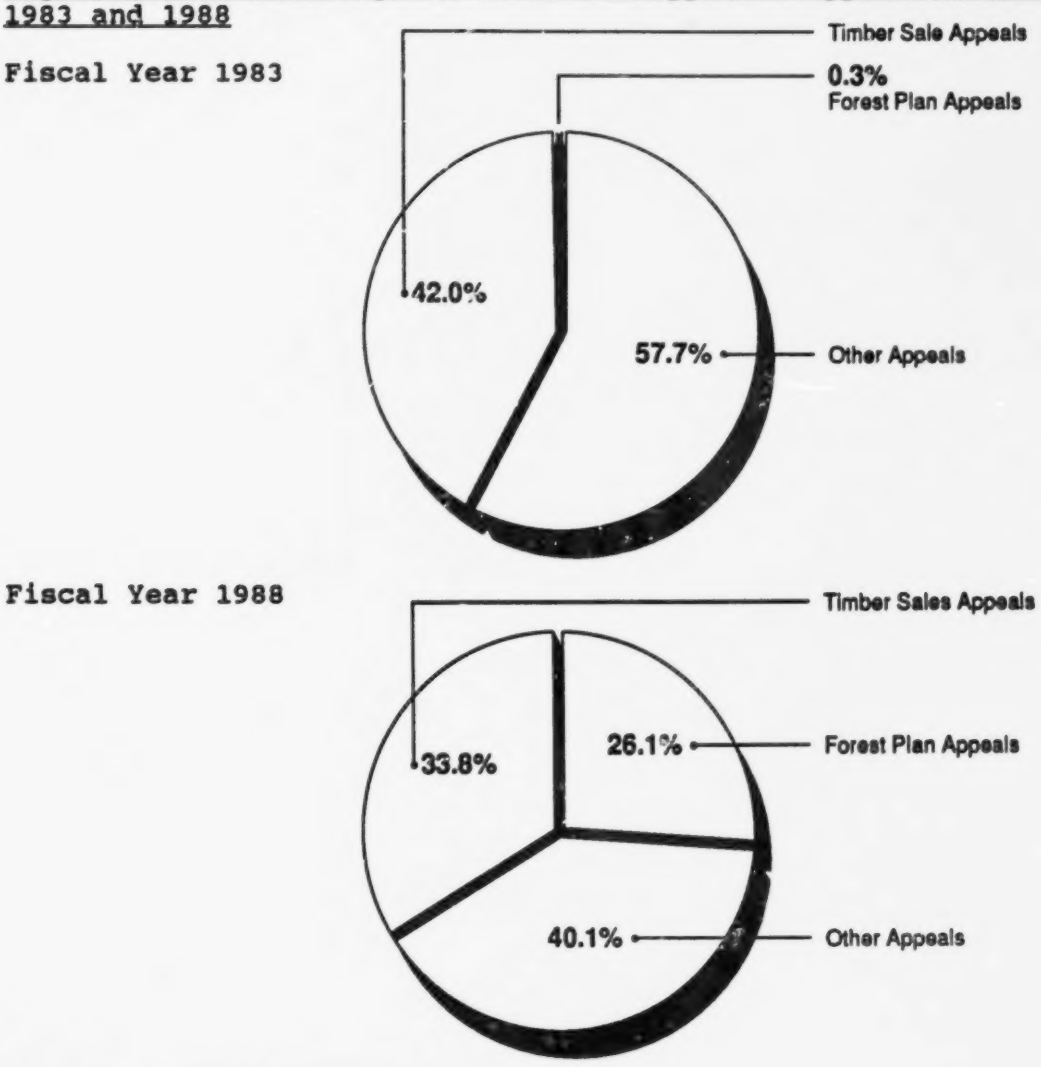
Source: Forest Service.

PERCENTAGE OF DIFFERENT TYPES OF APPEALS IN FISCAL YEARS 1983 AND 1988

As shown in figure 2.2, forest plan appeals made up less than 1 percent of all appeals filed in fiscal year 1983. However, as these plans began being issued in increased numbers in fiscal year 1985, many of them began generating several appeals each. By the

end of fiscal year 1988, the share of forest plan appeals had increased to 26 percent of all appeals, while the shares for timber sale and other appeals declined as a percentage of total appeals.

Figure 2.2: Percentage of Different Types of Appeals, Fiscal Years 1983 and 1988



Source: Forest Service.

PROCESSING TIMES FOR VARIOUS TYPES OF APPEALS IN FOREST SERVICE HEADQUARTERS

Our analysis of the 1,080 closed and unresolved appeals processed in Forest Service headquarters (i.e., excluding those

processed in regional offices) from fiscal year 1986 through mid-fiscal year 1988 showed that[1]

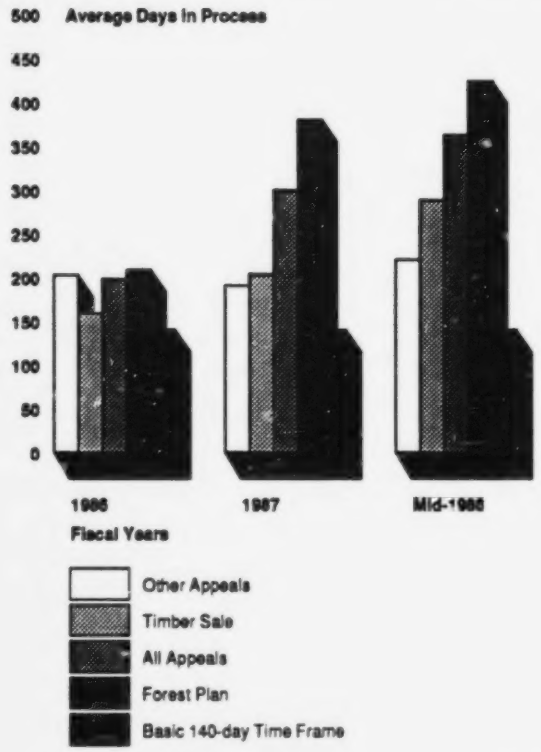
-- the time the average appeal spent in processing increased from 201 days in fiscal year 1986 to 363 days by March 31, 1988, or more than 2-1/2 times as long as generally provided for appeals processing;

-- the time that the average forest plan appeal had spent in processing increased from 211 to 424 days; and

-- the time that the average timber sale appeal had spent in processing increased from 162 to 294 days.

[1]The processing times discussed here and elsewhere in this report do not reflect the additional time that will be required to complete processing of unresolved appeals and, consequently, are understated by that amount.

Figure 2.3: Processing Times for Various Types of Appeals in Forest Service Headquarters, Fiscal Years 1986 Through Mid-1988[a]



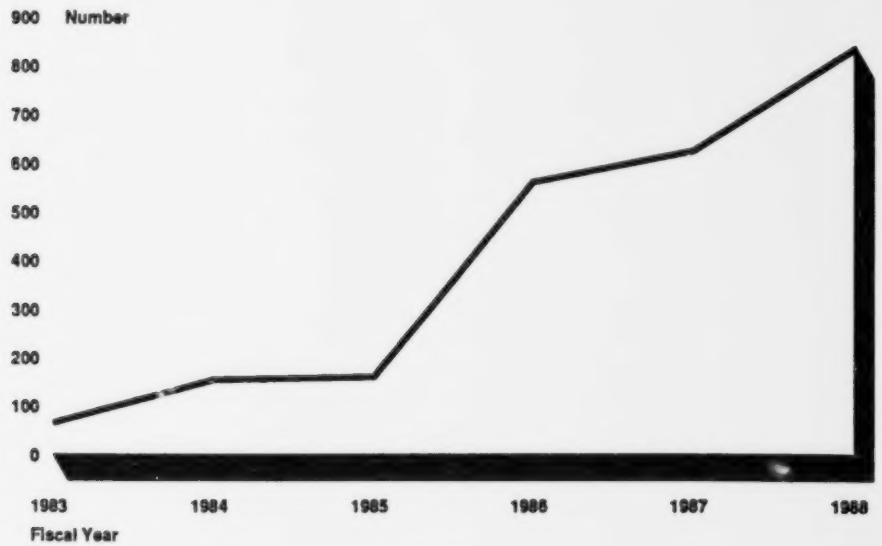
[a]Average processing times for fiscal year 1988 were as of March 31, 1988, and are thus somewhat understated because they do not include the additional time that unresolved appeals will require to complete processing. All processing times were compared with the basic 140-day time frame for level 1 appeals; however, some level 2 appeals are included, for which the basic time frame provided is only 125 days.

Source: GAO analysis of Forest Service data.

UNRESOLVED FOREST SERVICE APPEALS
FOR FISCAL YEARS 1983-88

Nationwide, the number of appeals that remained unresolved increased from 64 at the end of fiscal year 1983 to 830 at the end of fiscal year 1988. Forest plan appeals made up 367 of the 830 unresolved appeals, or 44 percent.

Figure 2.4: Unresolved Forest Service Appeals, Fiscal Years 1983-88[a]



[a]For each fiscal year, the data includes unresolved appeals that have or had exceeded the 140-day processing time frame provided by appeals regulations as well as those that have or had not.

Source: Forest Service.

SECTION 3

TIMBER SALE APPEALS IN REGIONS 1 AND 6

Timber sale appeals in regions 1 and 6 took longer on average to process than the basic time frame generally provided, with the Forest Service accounting for the bulk of the excess time.[1] According to the Service, this was largely because it often had difficulty in resolving appellant's concerns about how adequately it had documented the environmental effects of its challenged decisions. The Forest Service modified its original decisions in a substantial portion of these appeals.

NUMBER AND AVERAGE PROCESSING TIME FOR REGIONS 1 AND 6 TIMBER SALE APPEALS

As shown in table 3.1, our analysis of 151 timber sale appeals processed in regions 1 and 6 from October 1, 1985, through May 31, 1988, indicated that

-- timber sale appeals that had not been resolved in regions 1 and 6 as of May 31, 1988 (21 of 151), had been in processing for an average of 236 days, or 96 days longer than the basic 140-day time frame provided for level 1 appeals;

-- timber sale appeals that were resolved (130 of 151) took an average of 184 days to be processed, or 30 percent longer than the basic level 1 time frame;

-- the Forest Service reversed, or made some modification in, its prior decisions in 40 percent of the resolved appeals (52 of 130); and

-- level 2 appeals that were resolved (24 of 130) took an average of 192 days to be processed, or 54 percent longer than the basic 125-day level 2 time frame. (This time is in addition to the time it took to process these appeals in level 1.)

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[1]Except as otherwise noted, the time overrun calculations used throughout this report are based on the 140-day basic time frame for level 1 appeals. This understates actual time overruns to the extent that a small portion of appeals were level 2 appeals, for which the basic time frame is only 125 days.

Table 3.1: Number and Average Processing Time for Timber Sale Appeals in Regions 1 and 6, October 1, 1985, Through May 31, 1988

	Number of appeals	Average days in process	Average days overrun
All open (unresolved) timber sale appeals	21	236	96
All closed (resolved) timber sale appeals	130	184	44
Closed appeals by outcome:			
Original decision changed	52	151	11
Original decision upheld	78	206	66
Closed appeals by level:			
Level 1 appeals	106	182	42
Level 2 appeals	24	192	67[a]
Closed appeals by region:			
Region 1 appeals	60	177	37
Region 6 appeals	70	190	50

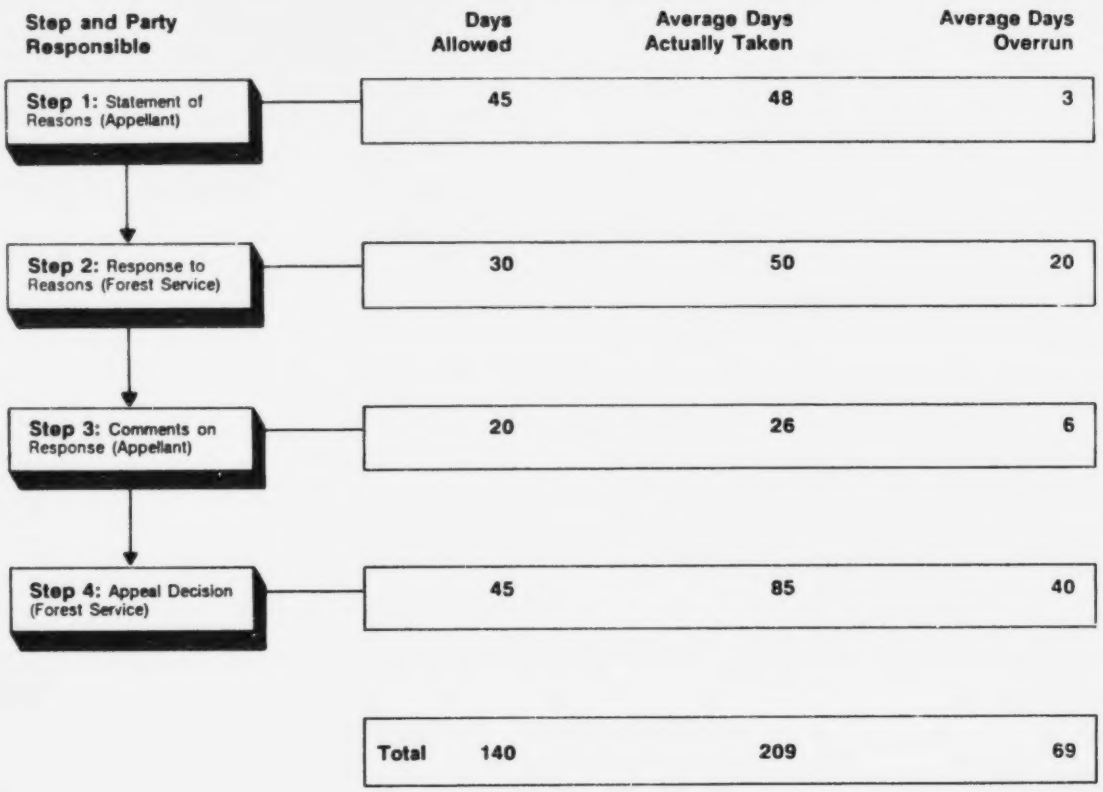
[a]The comparison here was to the 125-day level 2 time frame.

Source: GAO analysis of Forest Service data.

PROCESSING TIME OVERRUNS IN REGIONS 1 AND 6 TIMBER SALE APPEALS

As shown in figure 3.1, appellants used an average of 9 days beyond those provided for in the regulations to complete the steps they were responsible for in the appeals process (steps 1 and 3). The Forest Service used an average of 60 days of time overruns for its steps (steps 2 and 4). Accordingly, the Forest Service was responsible for 87 percent of the total time overruns beyond the 140 days generally provided for. Average processing times shown in figure 3.1, both for each step and in resulting totals, are calculated on the basis of closed and unresolved level 1 appeals that had actually completed a particular step. The reasons for the overruns by the Forest Service are discussed in the next section.

Figure 3.1: Processing Time Overruns by Step for Timber Sale Appeals in Regions 1 and 6, October 1, 1985, Through May 31, 1988



Source: GAO analysis of Forest Service data.

SECTION 4

FOREST PLAN APPEALS IN REGION 1

Most forest plan appeals in region 1 have not been resolved and have taken much longer to process than timber sale appeals, greatly exceeding the basic 140-day level 1 appeal time frame. The Forest Service accounted for the bulk of this excess time because it has had difficulties resolving numerous complex environmental issues raised in these appeals. These issues center on the adequacy of the documentation of environmental effects contained in the analyses that the Forest Service used to support its original decisions.

NUMBER AND AVERAGE PROCESSING TIME FOR REGION 1 FOREST PLAN APPEALS

Our analysis of the 177 region 1 forest plan appeals processed from October 1, 1985, through June 30, 1988, showed the following:

-- Only 32 of the region 1 forest plan appeals had been resolved. These appeals averaged 177 days to process. (Since all of these appeals had either been dismissed or withdrawn, none had to complete all processing steps.)

-- The 145 unresolved appeals had been in process an average of 537 days.

-- The Forest Service had not completed step 2 for 73 of the unresolved appeals. These appeals had been in process an average of 286 days.

-- The Forest Service had not completed step 4 for 72 of the unresolved appeals. These appeals had been in process an average of 793 days.

Table 4.1: Number and Average Processing Time for Forest Plan Appeals in Region 1, October 1, 1985, Through June 30, 1988

	Number of appeals	Average days in process	Average days overrun
Resolved appeals	32	177	37
Unresolved appeals:			
No Forest Service response (still in step 2)	73	286	146
No Forest Service decision (still in step 4)[a]	72	793	653
Total unresolved appeals	145	537	397

[a]Includes 14 appeals in which oral presentations were held that allowed an additional 20 days for comments, which we included in our calculations. These appeals were in process an average of 831 days, or 48 more days than the average 783 days in process for those that had no oral presentations. These averages do not include time needed to schedule presentations.

Source: GAO analysis of Forest Service data.

PROCESSING TIME OVERRUNS IN REGION 1 FOREST PLAN APPEALS

As shown in figure 4.1, appellants used an average of 32 days beyond those provided for in the regulations to complete the steps that they were responsible for in the appeals process (steps 1 and 3). The Forest Service used an average of 476 days of time overruns for its steps (steps 2 and 4). Accordingly, the Forest Service accounted for 94 percent of the total time overruns beyond the basic appeal time frames. Average processing times shown in figure 4.1 were based only on the closed and unresolved appeals that were deemed to have progressed to a given step.[1] If a step had not been completed by June 30, 1988, we calculated the days elapsed in the step as of this date.

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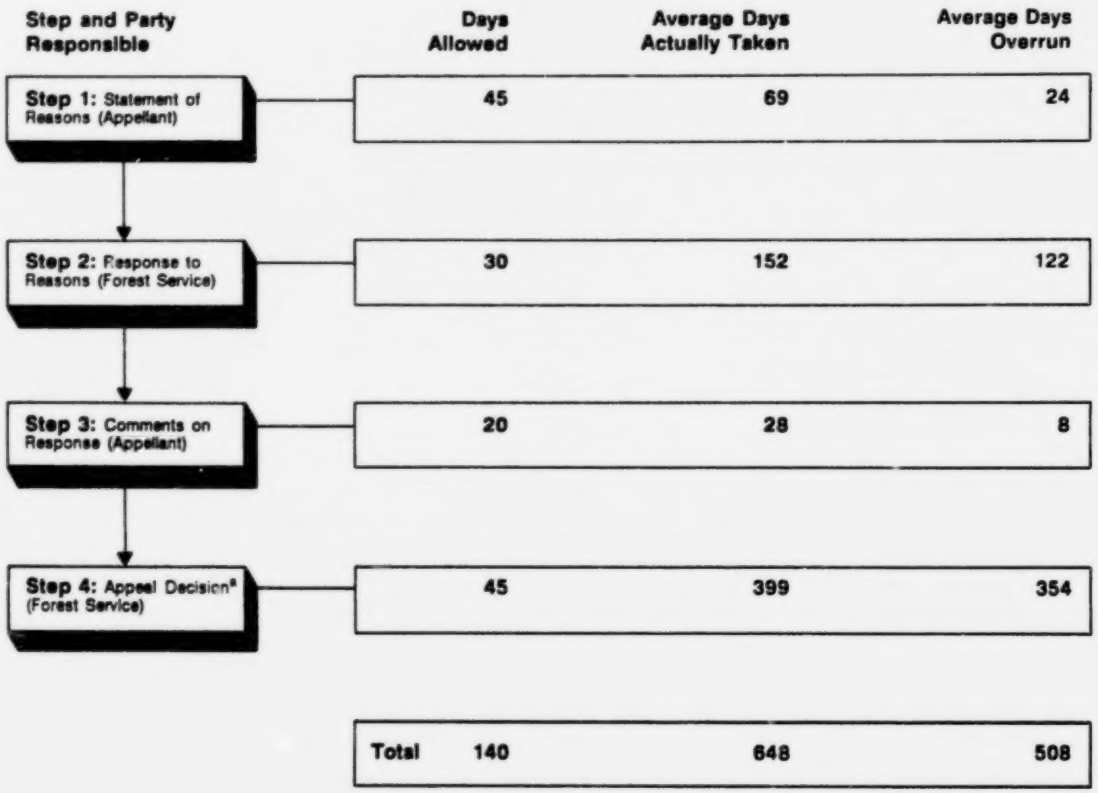
[1]On the basis of consultations with Forest Service staff, where dates were missing from appeals processing records, we assumed that the parties used the maximum allowed under regulations to complete steps for which they were responsible. The results of our analysis did not appear to be sensitive to use of these assumptions.

Figure 4.1: Processing Time Overruns by Step for Forest Plan Appeals in Region 1, October 1, 1985, Through June 30, 1988



[a]Of the 104 appeals that reached this step, 14 unresolved appeals had oral presentations and were allowed another 20 days for comments, which we included in our calculation. They spent an average of 446 days in this step, or 54 more days than the average of 392 days for those that had no oral presentation. These averages do not include the time needed to schedule presentations.

Source: GAO analysis of Forest Service data.

REASONS FOR TIME OVERRUNS

We found that, in general, the excessive time the Forest Service took to process appeals did not appear to be due to problems with the appeals system itself. Rather, the timeliness problem was related to difficulties the agency has experienced in resolving numerous complex environmental issues raised in appeals. On September 28, 1988, the Subcommittee on Forestry, Family Farms and Energy, House Committee on Agriculture, held hearings on the proposed changes in the Forest Service appeals process. At the hearings, the Chief of the Forest Service testified that the Service is missing its appeals processing deadlines because of difficulties it has experienced in responding to the increasing number of sophisticated challenges to environmental analyses which it prepares to justify its forest plan, timber sale, and other decisions. These challenges typically involve whether or not the Forest Service's analyses have properly documented the effects its decisions would have on water quality, wildlife habitat, or other aspects of the environment. The Forest Service has often had difficulty adequately documenting these effects. At the same hearings, the Associate Chief noted that environmental requirements are complex and have been evolving through judicial action. He noted that the Forest Service must often incorporate new court interpretations of environmental study requirements into its responses to appeals that are already in process at the time on other projects.

No more forest plan appeals are expected in region 1 for several years because these 10- to 15-year plans have been issued for all 13 of the forests in this region. However, plans have not yet been issued for the 19 forests in region 6, where over 40 percent of national forest timber sale volume occurs. The Forest Service plans to issue these plans in 1989, at which time it expects they will generate numerous appeals.

SECTION 5

DELAYED TIMBER SALES IN REGIONS 1 AND 6

Only a small portion of offered timber sales volume in the regions we examined had been appealed in fiscal years 1986 and 1987, and an even smaller portion was delayed by appeals. Some of these delays were due to the Forest Service's not completing environmental analyses in time for appeals to be processed. The Forest Service has been avoiding timber sales in certain areas because of the likelihood of appeals; however, this problem varies by locality. The Forest Service also did not offer some planned timber sales in areas in or adjacent to potential wilderness areas in region 1. Despite appeals and these other factors, the Service was able to meet overall national and regional timber sales goals by substituting other sales, except in region 1 in fiscal year 1988. The extent to which this region's shortfall was attributable to appeals of planned 1988 timber sales, versus problems with environmental analyses or other factors, cannot be determined until these appeals are decided.

AMOUNT OF DELAYED TIMBER SALE VOLUME

As shown in table 5.1, our analysis of the planned and actual sale offering dates of the timber sales in regions 1 and 6 for fiscal years 1986 and 1987 showed that

-- about 6 percent of the total volume offered for sale in regions 1 and 6 was appealed;

-- less than 1 percent of the total offered volume was delayed by these appeals (i.e., the appeals were found to be without merit, and the timber was not offered when planned);

-- the Forest Service contributed to some of these delays by not issuing environmental analyses in time for appeals to be processed without delaying sales; and

-- forest plan appeals did not delay any timber sales because the Forest Service requires appellants to file separate appeals on specific timber sales.

Table 5.1: Volume of Timber Sales Offered, Appealed, and Delayed in Regions 1 and 6, Fiscal Years 1986-87

(Volumes are in millions of board feet[a])

	Region 1	Region 6	Total	Percent of offered volume
Offered volume	2,068	10,637	12,705	100.0
Appealed volume	122	651	772	6.1
Appealed volume delayed[b]	12	78	91	0.7
Appealed volume delayed with untimely environmental analyses[c]	12	23	35	0.3

[a]Numbers do not add in some cases because of rounding.

[b]"Delayed" means that the sales were not offered in the fiscal year as planned and that the appeals were found to have no merit.

[c]"Untimely" means that the environmental analyses were issued in the same fiscal year as the planned sale.

Source: GAO analysis of Forest Service data.

REASONS FOR AND FACTORS RELATED TO DELAYS

Our analysis showed that the Forest Service contributed to more than one-third of the delayed timber volume by not issuing environmental analysis documents in time for appeals to be processed without delaying sales. Forest Service headquarters and regional timber officials told us that an environmental analysis is prepared in connection with each timber sale and that this is the stage at which sales are most often appealed, rather than when the timber is actually offered for sale at a later date. Historically, the analyses have been released 1 or 2 years before the timber was actually scheduled to be offered, allowing sufficient time for processing any appeals.

According to the Associate Chief of the Forest Service, the inventory of planned sales with approved environmental analyses has declined because of the appeals workload, staff reductions, disruption of the timber sales program due to forest fires, and the Service's inability to offer sales in roadless areas. As a result, analyses are often issued in the same fiscal year that the sales are scheduled, which does not allow sufficient time to process appeals under the regulations without delaying sales. This problem has been particularly acute in region 1. According to region 1

officials, they have recently added staff in two forests to accelerate completion of environmental analyses.

Regarding the Service's inability to offer sales in roadless areas, the Chief said that the Service has been avoiding offering sales in certain areas with no roads in both regions because it believes these sales will be appealed on the basis of environmental concerns. The Forest Service could not provide accurate data on the volume being avoided. However, according to Service officials, one forest in region 1 had not offered any timber for sale in the first three quarters of fiscal year 1988 because of appeals or anticipated appeals.

The Chief also said that delayed or avoided timber sales are not nationwide problems but have been concentrated in certain areas of particular controversy. The Associate Chief noted that at the national and regional levels, the Forest Service has been able to achieve its annual timber-sale-offering goals. In both regions 1 and 6, the Service was able to substitute other sales for delayed or avoided ones and meet regional volume goals for fiscal years 1986 and 1987 timber sale offerings. However, according to Service officials, four forests in region 1 did not make their sales targets for fiscal 1988, and they were not able to substitute for these sales from other forests in the region. The extent to which this shortfall was caused by appeals of planned 1988 timber sales, versus problems with environmental analyses or other factors, cannot be determined until these appeals are decided by the Forest Service. The officials also noted that in the next decade, an increasing proportion of the region's overall timber volume is planned to come from roadless areas that they are currently avoiding and, according to these officials, this may cause further problems in meeting regional sales volume goals.

Factors other than actual or anticipated appeals or delayed environmental documents constrain the Forest Service's ability to offer noncontroversial timber sales and, thus, to avoid appeals and possible delays. Region 1 officials said that they did not offer an additional 3 percent of the planned fiscal year 1987 timber volume offerings in region 1 because it is in or adjacent to areas that the Congress is considering designating as wilderness, where timber may not be harvested. The Chief of the Forest Service said that resolving wilderness boundaries will be of some help, but noted that the Service expects many of the proposed sales in areas that are not designated as wilderness to be appealed on environmental grounds.

SECTION 6

EFFORTS TO EXPEDITE APPEALS PROCESSING

Proposed changes to the current Forest Service regulations governing timber sale and forest plan appeals would eliminate existing level 2 and procedural appeals, eliminate two steps in the level 1 appeal process, and alter time frames for the remaining steps. These changes may reduce the number and average processing times of appeals, but the extent cannot be determined until these regulations are finalized and implemented. Processing of timber sale appeals under the system used by BLM takes substantially longer than does processing of Forest Service timber sale appeals.

PROPOSED CHANGES IN APPEALS REGULATIONS

In May 1988, following a review of the current appeals process, the Forest Service proposed changes in the regulations governing appeals. According to the Forest Service, the purposes of the proposed regulatory changes were to simplify the process to make it less costly to administer and easier to use and to give greater emphasis to discussions between the Forest Service and potential appellants to avoid appeals. The proposal would create two groups of appeals. Appeals involving environmental matters such as timber sales and forest plans, which make up 85 percent of all appeals, would be separated from those dealing with controversies over written instruments authorizing occupancy and use of Forest Service lands, such as grazing permits. The proposed regulations involving timber sales and forest plans would also eliminate existing level 2 and procedural appeals, as well as certain steps in the appeals process, and would alter time frames for the remaining steps.

Our analysis of these proposed changes in relation to the timber sale and forest plan appeals we examined indicates that the changes would:

-- No longer allow appellants to make oral presentations in step 4, which added 6 percent to region 1 forest plan processing times.

-- No longer allow interested third parties to become intervenors in step 4, which added 10 percent to region 1 forest plan processing times (third parties would be limited to submitting written comments).

-- No longer allow appellants extensions in step 1 for filing statements of reasons, which accounted for 4 percent of timber sale and 5 percent of forest plan time overruns in regions 1 and 6.

-- Eliminate step 2, in which the Forest Service is now required to respond to appellants' statement of reasons. This step accounted for 29 percent of timber sale and 24 percent of forest plan time overruns in regions 1 and 6.

-- Eliminate step 3, in which the appellant comments on the Forest Service response, and which accounted for 9 percent of timber sale and 2 percent of forest plan time overruns in regions 1 and 6.

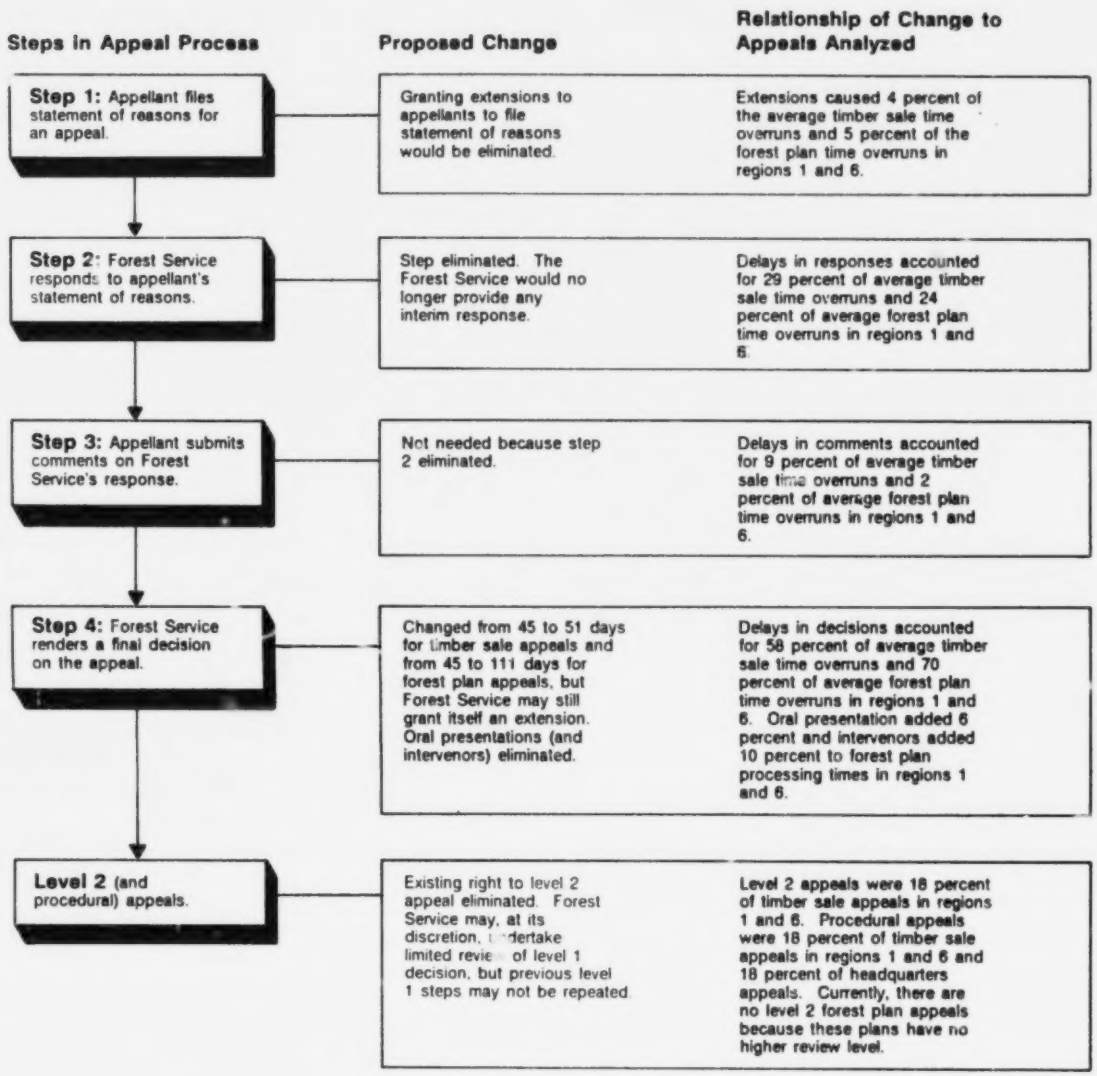
-- Eliminate existing level 2 appeals which accounted for 18 percent of timber sale appeals in regions 1 and 6. Only at the discretion of the Forest Service would any review of the level 1 decision take place, and such review would be limited, with no repetition of earlier level 1 steps being allowed. (There are no level 2 appeals of forest plans because no higher review level exists other than a limited review of the decision itself at the discretion of the Forest Service.)

-- Eliminate procedural appeals, which accounted for 18 percent of both timber sale appeals in regions 1 and 6 and of all headquarters appeals.

Forest Service officials told us that they do not expect to adopt final regulations until January 1989 at the earliest. The extent to which these changes might reduce the numbers of appeals and their processing times cannot be determined until after the regulations have been finalized and implemented.

Under the proposed changes (see fig. 6.1), the Forest Service may still grant itself time extensions in issuing its decisions, the step where the greatest time overruns are occurring. The changes do not directly address the difficulties that the Forest Service has experienced in resolving environmental issues raised by appeals--the factor that is principally responsible for these time overruns. However, Forest Service officials told us they believe that elimination of some steps and levels in the appeals process will result in a shift toward greater emphasis on addressing environmental concerns in original decisions, and that new requirements for early meetings with appellants will foster quicker resolution of differences. They also told us that the agency is designing staff training courses to focus on these issues.

Figure 6.1: Proposed Changes in Appeals Regulations and Their Relationship to Appeals Analyzed


Steps in Appeal Process
Proposed Change
Relationship of Change to Appeals Analyzed
Step 1: Appellant files statement of reasons for an appeal.
Granting extensions to appellants to file statement of reasons would be eliminated.
Extensions caused 4 percent of the average timber sale time overruns and 5 percent of the forest plan time overruns in regions 1 and 6.
Step 2: Forest Service responds to appellant's statement of reasons.
Step eliminated. The Forest Service would no longer provide any interim response.
Delays in responses accounted for 29 percent of average timber sale time overruns and 24 percent of average forest plan time overruns in regions 1 and 6.
Step 3: Appellant submits comments on Forest Service's response.
Not needed because step 2 eliminated.
Delays in comments accounted for 9 percent of average timber sale time overruns and 2 percent of average forest plan time overruns in regions 1 and 6.
Step 4: Forest Service renders a final decision on the appeal.
Changed from 45 to 51 days for timber sale appeals and from 45 to 111 days for forest plan appeals, but Forest Service may still grant itself an extension. Oral presentations (and intervenors) eliminated.
Delays in decisions accounted for 58 percent of average timber sale time overruns and 70 percent of average forest plan time overruns in regions 1 and 6. Oral presentation added 6 percent and intervenors added 10 percent to forest plan processing times in regions 1 and 6.
Level 2 (and procedural) appeals.
Existing right to level 2 appeal eliminated. Forest Service may, at its discretion, undertake limited review of level 1 decision, but previous level 1 steps may not be repeated.
Level 2 appeals were 18 percent of timber sale appeals in regions 1 and 6. Procedural appeals were 18 percent of timber sale appeals in regions 1 and 6 and 18 percent of headquarters appeals. Currently, there are no level 2 forest plan appeals because these plans have no higher review level.

Source: GAO analysis of Forest Service data.

COMPARISON WITH BLM'S APPEAL SYSTEM

BLM has an appeal system that allows members of the public to object to its decisions, including those decisions involving the sale of timber from lands BLM administers. However, BLM appeals are not processed through a line officer review system within the agency as is done in the Forest Service. Instead, appeals are first filed as protests with the appropriate BLM state office. If the appeal is rejected, it can be re-appealed to a second-level proceeding before the Interior Board of Land Appeals, an independent board of hearing judges in Washington, D.C.

We obtained data on BLM's processing of timber sale appeals in areas encompassed by region 6 of the Forest Service, where the bulk of all BLM timber sale appeals arise. Of the BLM timber sale appeals for fiscal years 1981 through August 31, 1988, 35 percent were resolved at the first level. Including the time allowed for appellants to file, these appeals averaged 45 days to process. However, the remaining 65 percent of BLM timber sale appeals were re-appealed to the second level and took and average of 456 additional days to be processed by the hearing board. Thus, BLM timber sale appeals averaged 341 days to process, or 57 percent longer than the Forest Service timber sale appeals that we reviewed in regions 1 and 6.

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